

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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:  
UNITED STATES OF AMERICA, :  
: CR-08-906 (KAM)  
v. :  
: March 5, 2009  
SEIDOU MFOMBOUTMOUN, :  
: Brooklyn, New York  
Defendant. :  
:  
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING  
BEFORE THE HONORABLE JAMES ORENSTEIN  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: BENTON CAMPBELL, ESQ.  
UNITED STATES ATTORNEY  
BY: PATRICK SINCLAIR, ESQ.  
ASSISTANT U.S. ATTORNEY  
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For the Defendant: DAVID GORDON, ESQ.

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Proceedings recorded by electronic sound recording,  
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1                   THE CLERK: U.S. versus Mfomboutmoun. Docket  
2 number 08-CR-906. Please state appearance for the record.

3                   MR. SINCLAIR: For the United States, Patrick  
4 Sinclair. Good afternoon, your Honor.

5                   THE COURT: Good afternoon.

6                   MR. GORDON: David Gordon for Mr. Mfomboutmoun.

7                   THE INTERPRETER: And Mouvir Khaddar, French  
8 interpreter.

9                   (Interpreter is sworn)

10                  THE COURT: And Mr. Mfomboutmoun is with us.

11                  THE DEFENDANT: Mfomboutmoun.

12                  THE COURT: You're Mr. Mfomboutmoun. Good  
13 afternoon, Sir.

14                  And, Mr. Gordon, I understand your client is here  
15 because he wishes to enter a plea of guilty to Count 1.

16                  MR. GORDON: Yes. It's the only count that he's  
17 named in.

18                  THE COURT: Mr. Mfomboutmoun, are you able to  
19 understand me with the assistance of the interpreter?

20                  THE DEFENDANT: Yes.

21                  THE COURT: Folks, I apologize. I left a paper  
22 that I need in my office. I'll be one moment. Please  
23 forgive me.

24                  (Pause in proceedings)

25                  THE COURT: Mr. Mfomboutmoun, there are a number

1 of things I have to ask you and some things I have to  
2 explain to you today. Your answers to me must be truthful  
3 so I'm going to have you sworn in.

4 (Defendant is sworn)

5 THE CLERK: Please state your name for the record.

6 THE DEFENDANT: My name is --

7 THE CLERK: Can you spell it for us, please?

8 THE DEFENDANT: M-f-o-m-b-o-u-t-m-o-u-n, Seidou,  
9 S-a-i-d-o-u.

10 MR. GORDON: It's S-e.

11 THE DEFENDANT: S-e-i-d-o-u.

12 THE COURT: How do you address yourself? Is it  
13 Mr. Mfomboutmoun or Mr. Seidou?

14 THE DEFENDANT: I'm called Mr. Seidou.

15 MR. SINCLAIR: Mr. Seidou.

16 THE DEFENDANT: Seidou.

17 MR. SINCLAIR: Your Honor, my understanding is  
18 that it's polite to refer individuals from Mr.  
19 Mfomboutmoun's country as simply Seidou. It's not  
20 disrespectful.

21 THE COURT: You prefer if I simply address you as  
22 Seidou?

23 THE DEFENDANT: Either way is okay.

24 THE COURT: How have you been addressing your  
25 client?

1                   MR. GORDON: Sir. (Laughing) Actually, Mr.  
2 Mfomboutmoun but that may have been my error.

3                   THE COURT: I'll continue to call you Mr.  
4 Mfomboutmoun.

5                   THE DEFENDANT: Either way it's great, your Honor.

6                   THE COURT: Alright. You understand me, sir, that  
7 having sworn to tell the truth you must tell the truth?

8                   THE DEFENDANT: Yes.

9                   THE COURT: If you were deliberately to lie in  
10 response to my questions, you could face additional charges  
11 for perjury.

12                  Do you understand this?

13                  THE DEFENDANT: Yes.

14                  THE COURT: It's very important that you  
15 understand what I ask you so if you have any questions, if  
16 you need me to explain or repeat something, just let me  
17 know.

18                  Will you do that, please?

19                  THE DEFENDANT: Yes.

20                  THE COURT: If you need time to confer with your  
21 attorney, just let me know that and I'll give you as much as  
22 you need. You'll do that?

23                  THE DEFENDANT: Okay, yes.

24                  THE COURT: Mr. Sinclair, given the nature of the  
25 charge, I'm not sure this is relevant but are there any

1 identified witnesses to the offense? Any identified victims  
2 to the offense?

3 MR. SINCLAIR: There are no human victims to the  
4 offense, your Honor.

5 THE COURT: Are there agencies that have been  
6 notified?

7 MR. SINCLAIR: If you're referring to the embassy  
8 notification, the (ui) notification as to U.S. to a non-U.S.  
9 citizen --

10 THE COURT: No, no, just in terms of the Victims  
11 Rights Statute.

12 MR. SINCLAIR: There's been no notification given  
13 under the Victim Rights, there are no identified victims.

14 THE COURT: That was my question. Okay. Now, Mr.  
15 Mfomboutmoun, there are two documents that I saw you sign  
16 earlier.

17 I want to make sure, did you understand each of  
18 these documents before you signed them?

19 THE DEFENDANT: That's what I have just signed?

20 THE COURT: Yes.

21 THE DEFENDANT: Yes.

22 THE COURT: I will discuss each of them with you  
23 as we go through this. Before we proceed, I need to be sure  
24 that you are competent. And so I'm going to ask you some  
25 personal questions. It's not because I wish to pry.

1                   How old are you?

2                   THE DEFENDANT: I am thirty-seven now.

3                   THE COURT: And how far did you go in school?

4                   THE DEFENDANT: I did college in the third level.

5                   THE COURT: Are you now or have you recently been  
6 under the care of a doctor or a psychiatrist for any reason?

7                   THE INTERPRETER: Your Honor, he's asking me to  
8 repeat the question again. I'm going to repeat it.

9                   THE DEFENDANT: I had a test, TB test.

10                  THE COURT: I'll interrupt. I'm not asking for  
11 any tests that you've had. Are you being treated? Have you  
12 recently been treated by a doctor or a psychiatrist?

13                  THE DEFENDANT: No.

14                  THE COURT: In the last twenty-four hours, have  
15 you had any pill or drug or medicine or alcohol?

16                  THE DEFENDANT: No.

17                  THE COURT: Have you ever been hospitalized or  
18 treated for any form of addiction or substance abuse?

19                  THE DEFENDANT: No, I have not been involved in  
20 drugs whatsoever, no.

21                  THE COURT: Is your mind clear today?

22                  THE DEFENDANT: Yes.

23                  THE COURT: Have you had any difficulty  
24 understanding my questions once they're translated?

25                  THE DEFENDANT: No.

1                   THE COURT: Mr. Gordon, have you discussed the  
2 matter of a guilty plea with your client?

3                   MR. GORDON: Yes, your Honor.

4                   THE COURT: In your view, does he understand the  
5 rights that he would waive by pleading guilty?

6                   THE DEFENDANT: Yes.

7                   THE COURT: Do you have any reason to question his  
8 competency to proceed today?

9                   THE DEFENDANT: None whatsoever.

10                  THE COURT: Sir, I'm going to discuss with you now  
11 this one page document that you signed. It's what's called  
12 an order of referral.

13                  The case is assigned to a higher ranking judge,  
14 Judge Matsumoto. She's appointed by the president for life.  
15 And she will be the one who imposes the sentence on you if  
16 you're convicted. If you wish, there'll be no harm to you  
17 if you prefer to have Judge Matsumoto hear your guilty plea.

18

19                  THE DEFENDANT: No.

20                  THE COURT: Okay. As long as you understand that  
21 you have the right to have Judge Matsumoto hear it. But if  
22 you prefer and I have your consent, I will proceed.

23                  THE DEFENDANT: Okay.

24                  MR. GORDON: Your Honor, I've explained to him  
25 that you'll be asking all the questions but actually Judge

1 Matsumoto will be the one that actually accepts the guilty  
2 plea.

3 THE COURT: Correct. And was it your intention to  
4 agree to have me hear your plea when you signed this first  
5 copy?

6 THE DEFENDANT: Yes.

7 THE COURT: Alright. I want to be sure that you  
8 understand what the government would have to prove in order  
9 to convict you of the charge against you.

10 The charge is known as conspiracy to smuggle a  
11 certain item known as African elephant ivory. In proving  
12 you guilty, the government would have to prove several  
13 different things.

14 First, it would have to prove that you entered  
15 into an agreement with at least one other person. It would  
16 have to prove that the purpose of that agreement was to  
17 bring into the United States African elephant ivory, to do  
18 it against the law of this country and to receive that ivory  
19 or conceal it or buy it or sell it or facilitate it's  
20 concealment or sale knowing that the ivory had been brought  
21 into the United States in violation of certain laws.

22 They'd also have to prove that you acted knowingly  
23 and intentionally. They'd have to prove that -- Well, let  
24 me ask the prosecutor, (ui) fraudulently entered. Is there  
25 an element of fraud?

1                   MR. SINCLAIR: This tracks the statute to the 545  
2 statute; fraudulent and knowingly.

3                   THE COURT: Yeah, knowingly I understand.

4                   MR. SINCLAIR: Yes.

5                   THE COURT: I don't understand that there  
6 necessarily have to be a misrepresentation.

7                   MR. GORDON: I'd like to clarify, your Honor. I  
8 think it's by bringing it in secretly, not declaring it  
9 that's a fraud.

10                  THE COURT: Okay.

11                  MR. GORDON: And, your Honor, it's my  
12 understanding that they'd have to an agreement either to  
13 import it or to receive it knowing it had been imported.

14                  MR. SINCLAIR: That's correct.

15                  THE COURT: That's fine. They'd have to prove an  
16 agreement with at least one other person. The agreement  
17 would have to be to accomplish at least one of these things:  
18 either to bring in the ivory and conceal it and bring it in,  
19 smuggle it in, or to receive it after it had been brought  
20 into this country in violation of law or to conceal it or  
21 buy or sell the ivory or to conceal it's transportation for  
22 sale.

23                  They'd have to prove that you acted intentionally  
24 and knowingly. They'd have to prove that this agreement  
25 existed within a time period mentioned in the indictment.

1 From March of 2006 through the beginning of December of  
2 2008.

3 Do you wish to interrupt?

4 MR. GORDON: Only that it has to be at some point  
5 within that time period, not the entire time period.

6 THE COURT: Yes, that the agreement existed at  
7 some point during that period. And they'd also have to  
8 prove that you or somebody else within that agreement did at  
9 least one thing to make that agreement succeed.

10 I'm sorry, they'd also have to prove that  
11 something relating to that agreement took place within the  
12 geographical area known as the Eastern District of New York,  
13 which includes Kennedy Airport.

14 Do you understand what the government would have  
15 to prove?

16 THE DEFENDANT: I understand, your Honor.

17 THE COURT: Have I omitted any of the essential  
18 elements?

19 MR. SINCLAIR: I believe you've identified them  
20 all.

21 THE COURT: These are the things that the  
22 government would have to prove if they were to try and  
23 convict you. You have the right to plead not guilty and  
24 make them prove it.

25 Do you understand that?

1                   THE DEFENDANT: Yes, I understand, your Honor.

2                   THE COURT: If you plead not guilty, you would be  
3 entitled to a speedy and a public trial by a jury with the  
4 assistance of your attorney.

5                   Do you understand that?

6                   THE DEFENDANT: Yes.

7                   THE COURT: If you could not afford to retain an  
8 attorney, Mr. Gordon would continue to represent you at the  
9 trial --

10                  MR. GORDON: I'm assigned. I'm assigned.

11                  THE COURT: Mr. Gordon would continue to represent  
12 you at the trial at no cost to yourself. And he would  
13 continue to represent you or somebody would represent to any  
14 appeal if there was an appeal.

15                  Do you understand that?

16                  THE DEFENDANT: Yes.

17                  THE COURT: At the trial, you would be presumed  
18 innocent and the government would have to overcome that  
19 presumption and prove you guilty beyond a reasonable doubt.

20                  If the government failed -- I'm sorry. You would  
21 not have to prove that you were innocent. If the government  
22 failed to prove your guilt beyond a reasonable doubt, the  
23 jury would have a duty to find you not guilty.

24                  Do you understand? Do you understand?

25                  THE DEFENDANT: Yes.

1                   THE COURT: Also, at the trial the government  
2 would have to bring its witnesses to court so that they  
3 could testify in your presence.

4                   Your attorney would have the right to cross-  
5 examine the witnesses. He could object to any evidence that  
6 the government tried to offer against you. He could offer  
7 evidence in your behalf if he thought that there was  
8 evidence that could assist you. And he could compel  
9 witnesses to come to the courtroom if there were witnesses  
10 he wished to question.

11                  MR. GORDON: Your Honor, on the specific facts of  
12 this case, it's my understanding that Judge Matsumoto had  
13 ordered a deposition with respect to a witness so that that  
14 particular witness, if he's unavailable for trial, the  
15 confrontation and the cross-examination might occur only at  
16 a deposition, videotaped deposition, at which Mr.  
17 Mfomboutmoun and I would be present so that the trial  
18 itself --

19                  THE COURT: I'm familiar with that.

20                  MR. GORDON: Yeah, I know but since you said he  
21 would have the right to have the witnesses --

22                  THE COURT: And I'm explaining his rights to him.  
23 If I omit a right that he would have, I'm sure you'll tell  
24 me. But let's not needlessly complicate this because every  
25 one of his constitutional rights would be protected just as

1 much at the deposition as it would be at trial.

2 MR. GORDON: Oh, I didn't say that. I didn't say  
3 that, your Honor. However, you said he has a right to  
4 confront the witnesses at the trial and in this case --

5 THE COURT: A deposition is considered part of the  
6 trial.

7 MR. GORDON: Fine.

8 THE COURT: Anything else that you want to explain  
9 to your client?

10 MR. GORDON: No, no.

11 THE COURT: Okay. Do you understand the rights  
12 that you would have that I've explained to you and that your  
13 counsel has just explained to you?

14 THE DEFENDANT: Yes.

15 THE COURT: At the trial you also would have a  
16 right to testify if you wish to do so.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: You could not be forced to be a  
20 witness at your trial and that's because under our  
21 Constitution no person can be made to be a witness against  
22 himself. So, if you decided to go to trial and decided not  
23 to testify, the Court would instruct that the jury could not  
24 hold that fact against you.

25 Do you understand that?

1                   THE DEFENDANT: Yes, I understand.

2                   THE COURT: If you plead guilty and if based on my  
3 recommendation the judge accepts your plea, if she accepts  
4 that plea, you'll be giving up your right to a trial and  
5 these other rights that I've discussed with you.

6                   There will be no trial. You will simply be found  
7 guilty based on your plea. You won't be allowed to appeal  
8 the determination of guilt. And you won't be able to  
9 challenge that determination of guilt in any later  
10 proceeding.

11                  THE DEFENDANT: May I ask you to repeat again,  
12 your Honor.

13                  THE COURT: If you plead guilty and it's accepted,  
14 there will be no trial, no appeal on the question of your  
15 guilt and no later proceeding where you could challenge the  
16 determination of guilt. The question of your guilt will be  
17 settled for all time.

18                  Do you understand that?

19                  THE DEFENDANT: Okay, yes. Yes.

20                  THE COURT: You should also understand that if you  
21 decide to plead guilty, I'm going to ask you what you did  
22 that makes you guilty. If you answer my question, you'll be  
23 giving up your right not to be a witness against yourself.

24                  Do you understand that?

25                  THE DEFENDANT: Yes.

1                   THE COURT: Are you willing to give up your right  
2 to a trial and these other rights that I've just discussed  
3 with you?

4                   THE DEFENDANT: May I ask you to repeat, your  
5 Honor?

6                   THE COURT: Do you want to abandon the right to a  
7 trial and the other rights that I've just described?

8                   THE DEFENDANT: Yes.

9                   THE COURT: Let's turn now to the plea agreement,  
10 your agreement with the government. This is the document I  
11 saw you sign before.

12                  Before you signed this document, did somebody  
13 translate it for you?

14                  THE DEFENDANT: Yes.

15                  THE COURT: Did you understand it before you  
16 signed it?

17                  THE DEFENDANT: Yes, I did. I understand. Yes, I  
18 understood.

19                  THE COURT: I'm not going to go through it item by  
20 item because I don't want to give you the wrong impression  
21 that one part is more or less important than another part.  
22 As far as I can tell, this entire document is your  
23 agreement.

24                  Is that your understanding as well?

25                  THE DEFENDANT: Yes.

1                   THE COURT: Do you think that the government has  
2 promised you anything that isn't written down in this  
3 document?

4                   THE DEFENDANT: No.

5                   THE COURT: Mr. Gordon, is that your understanding  
6 as well?

7                   MR. GORDON: Yes, that's correct.

8                   THE COURT: Mr. Sinclair, is it your  
9 understanding?

10                  MR. SINCLAIR: That is my understanding, your  
11 Honor.

12                  THE COURT: Let's discuss the sentencing  
13 possibilities. If you're convicted of this offense the  
14 maximum prison term is five years.

15                  Do you understand?

16                  THE DEFENDANT: Yes.

17                  THE COURT: There is no minimum prison term. If  
18 you are sentenced to prison, the Court can also impose a  
19 term of what's called supervised release. The term would be  
20 up to three years. What supervised release means after you  
21 are released from prison you'll be under supervision and  
22 you'll have obey certain conditions.

23                  If you violate any of those conditions of your  
24 release you could be returned to prison for up to two years  
25 without credit for the time that you had already been in

1 prison and without credit for the time that you had already  
2 completed under supervision.

3 Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: In addition to prison and supervised  
6 release, the Court can impose a fine. Now the fine can be  
7 as much as \$250,000. It could be higher. The Court could  
8 also impose a fine equal to double the amount that either  
9 you gained or somebody else lost as a result of the crime.

10 And I don't know what that number would be. So, I  
11 can't tell you today what the maximum possible dollar amount  
12 of the fine would be. And if you need to know what that  
13 maximum amount is before you plead guilty, you should not  
14 plead guilty because I can't tell you.

15 Do you understand that?

16 THE DEFENDANT: Yes, I understand, your Honor.

17 THE COURT: In addition to everything else I've  
18 described, the Court must also require you to pay something  
19 called a special assessment in the amount of \$100.

20 Do you understand?

21 THE DEFENDANT: Yes, I understand.

22 THE COURT: You should also assume that if you are  
23 convicted of this offense that you will eventually be  
24 deported from this country.

25 Do you understand that?

1                   THE DEFENDANT: Yes, I understand.

2                   THE COURT: In addition, the Court can require you  
3 to forfeit, to give up, the gains or the property associated  
4 with this offense. And the specific property at issue that  
5 you would have to forfeit is listed on pages five, six and  
6 seven of the plea agreement.

7                   Do you understand?

8                   THE DEFENDANT: Yes, I understand.

9                   THE COURT: And you've reviewed the list of  
10 properties that would be forfeited?

11                  THE DEFENDANT: Yes.

12                  MR. GORDON: I've explained, your Honor, that it  
13 includes all the ivory that not all of which is attributable  
14 to Mr. Mfomboutmoun. He doesn't have an interest in all  
15 that property but it doesn't matter.

16                  THE COURT: Right. And there's also I see a  
17 couple of vehicles.

18                  MR. GORDON: Those are not his.

19                  THE COURT: Okay.

20                  MR. SINCLAIR: Nevertheless, he's forfeiting his  
21 interest -- any interest that he might have.

22                  THE COURT: What we're talking about is that all  
23 of these items listed on pages five through seven, whether  
24 they are now yours or somebody else's, you would give up any  
25 claim you might have to any of those items.

1                   Do you understand that?

2                   THE DEFENDANT: Yes, I understand.

3                   THE COURT: Alright. Now in deciding what  
4 sentence to impose the Court will have to take into account  
5 the federal sentencing guidelines.

6                   And I see -- Have you discussed the guidelines  
7 with your attorney?

8                   THE DEFENDANT: Yes.

9                   THE COURT: I see that there's a calculation in  
10 the plea agreement that predicts what the guideline offense  
11 level will be in this case.

12                  THE INTERPRETER: I'm sorry, your Honor, I didn't  
13 hear.

14                  THE COURT: I'll start again. I see that in the  
15 plea agreement there's a calculation of what the guideline  
16 recommendation will be in this case.

17                  What I want to make sure you understand is that  
18 what's written down about the guidelines here is an  
19 estimate. Nobody here knows for sure what the guidelines  
20 will be. They will be calculated later by Judge Matsumoto.

21                  Do you understand?

22                  THE DEFENDANT: Okay.

23                  THE COURT: Okay. Now the way these guidelines  
24 work is they help the judge choose a sentence by coming up  
25 with two scores that measure the case.

1                   One number measures the seriousness of the  
2 offense. So in a case like this the amount of ivory, for  
3 example, would affect the score.

4                   Do you understand?

5                   THE DEFENDANT: Yes, I understand.

6                   MR. GORDON: Your Honor, I think it's actually the  
7 value of the ivory rather than the number of pieces.

8                   THE COURT: (Ui). The other number is based on  
9 any crimes you've committed in the past, convictions and  
10 time in jail.

11                  Do you understand?

12                  THE DEFENDANT: May I ask that you repeat again,  
13 your Honor?

14                  THE COURT: The second number measures your own  
15 criminal history; convictions, time in jail and similar.

16                  THE DEFENDANT: No, I wasn't asked it.

17                  THE COURT: I'm not asking if you were. That's a  
18 different number that can affect the guidelines.

19                  THE DEFENDANT: Okay.

20                  THE COURT: When the judge has those two numbers  
21 she can look up on a table the appropriate guideline range.

22                  Do you understand? Do you understand?

23                  THE DEFENDANT: Yes.

24                  THE COURT: That will provide the judge will a  
25 recommendation of an appropriate sentence. And the judge

1 must consider it. But she can also impose a higher or a  
2 lower sentence. Ultimately, the judge will impose a  
3 sentence that she thinks is reasonable under all of the  
4 circumstances.

5 Do you understand?

6 THE DEFENDANT: Yes.

7 THE COURT: Now, before the judge sentences you,  
8 the Probation Department will interview you and they'll talk  
9 to the government and they'll prepare a report about the  
10 case.

11 That report will have information about you and  
12 about the case. It will discuss the law and it will  
13 calculate the sentencing guidelines. You will have a chance  
14 to review that report with your attorney.

15 Do you understand?

16 THE DEFENDANT: Yes.

17 THE COURT: You may not like what you see in the  
18 report. You may think there's a mistake or that something  
19 is unfair. That will not be a reason for you to take back  
20 your guilty plea.

21 Do you understand?

22 THE DEFENDANT: Yes.

23 THE COURT: What you can do, if you think there's  
24 something wrong with the report, is object. And the judge  
25 will hear your objection and she'll rule on that objection

1 and she'll calculate the guidelines for herself and she'll  
2 hear you and then she'll impose a sentence.

3 Do you understand?

4 THE DEFENDANT: Yes, I understand.

5 THE COURT: At any step along the way --

6 THE DEFENDANT: (Ui).

7 THE COURT: No, in doing what I've just described;  
8 ruling on objections and listening to you and calculating  
9 the guidelines, in any of those steps, you may think the  
10 judge makes a mistake or you may think she acts unfairly;  
11 that will not be a reason to take back your guilty plea.

12 Do you understand?

13 THE DEFENDANT: Yes.

14 THE COURT: Now normally, if you think the judge  
15 makes a mistake in the sentencing, you would be entitled to  
16 appeal the sentence.

17 Do you understand that?

18 THE DEFENDANT: Yes, I understand.

19 THE COURT: However, I see in the plea agreement  
20 that -- and this is in paragraph four on page four -- that  
21 if the judge imposes a sentence of sixteen months or less,  
22 that you give up your right to appeal the sentence. What  
23 that means is that even if you think she makes a mistake in  
24 imposing a sentence, as long as sixteen months, you won't  
25 complain about it to a higher Court.

1                   Is that your understanding as well?

2                   THE DEFENDANT: Yes, I understand.

3                   THE COURT: And is it your intention to give up  
4 that part of your right to file an appeal?

5                   THE DEFENDANT: I'm sorry, your Honor.

6                   THE COURT: You would normally have the right to  
7 appeal the sentence that is incorrect. So, I'm asking if  
8 it's your intention to give up part of your right to appeal  
9 by saying you won't appeal even a mistake in sentence that  
10 is sixteen months or less?

11                  THE DEFENDANT: Yes.

12                  THE COURT: Okay. Is there anything you'd like to  
13 ask me about the charge in this case, about your rights or  
14 about sentencing or anything else? Do you have any  
15 questions?

16                  THE DEFENDANT: No, I don't have. Thank you.

17                  THE COURT: I'm going to give you one more chance  
18 to ask something. It's important because people sometimes  
19 change their minds.

20                  And if you change your mind later and come back to  
21 court and say that you didn't understand something, the  
22 prosecutor will get a transcript of today's proceeding and  
23 he'll go back to the Court and say that you understood  
24 exactly what you were doing and that you shouldn't be  
25 allowed to take back your plea. And he'll probably win on

1 that.

2 So, it's very important if there's anything that  
3 you don't understand or that you need to know that would  
4 affect your decision about whether to plead guilty, now's  
5 the time to ask because later it could be too late.

6 Do you understand that?

7 THE DEFENDANT: Yes, I understand.

8 THE COURT: Do you want to ask me anything else?

9 (Pause in proceedings)

10 THE DEFENDANT: Possibly question is with respect  
11 to my deportation.

12 THE COURT: What is the question?

13 THE DEFENDANT: That's what I would like to have  
14 more details on to understand.

15 THE COURT: It's actually very simple. You're not  
16 a citizen, correct?

17 THE DEFENDANT: Yes, I'm not U.S. citizen.

18 THE COURT: If you are convicted of this offense,  
19 you should assume that when you are finished when your  
20 sentence, if not sooner, you will be deported.

21 Do you understand?

22 THE DEFENDANT: Yes, I understand.

23 THE COURT: Is there anything else you'd like to  
24 ask me about?

25 THE DEFENDANT: No.

1                   THE COURT: Do you need further time to discuss  
2 the matter with your attorney?

3                   THE DEFENDANT: No.

4                   THE COURT: Mr. Gordon, do you know of any legal  
5 reason why your client should not plead guilty?

6                   MR. GORDON: No, your Honor.

7                   THE COURT: Mr. Mfomboutmoun, are you satisfied  
8 with the legal representation you have received so far?

9                   THE DEFENDANT: Yes.

10                  THE COURT: Now, tell me how do you plead to the  
11 first charge in the indictment, guilty or not guilty?

12                  THE DEFENDANT: Guilty.

13                  THE COURT: Are you making this plea of guilty  
14 voluntarily and of your own free will?

15                  THE DEFENDANT: Voluntarily.

16                  THE COURT: Has anyone threatened or forced you to  
17 plead guilty?

18                  THE DEFENDANT: No.

19                  THE COURT: Other than your written agreement with  
20 the government, has anyone made any promise that is causing  
21 you to plead guilty?

22                  THE DEFENDANT: No.

23                  THE COURT: Has anyone promised you what your  
24 sentence will be?

25                  THE DEFENDANT: No.

1                   THE COURT: Tell me please in your own words what  
2 you did that you think makes you guilty of the offense  
3 that's charged.

4                   THE DEFENDANT: I arranged to smuggle with people  
5 ivory to this country.

6                   THE COURT: Alright. Did you know that what you  
7 were importing was African elephant ivory?

8                   THE DEFENDANT: Yes.

9                   THE COURT: Did you know that there were treaties  
10 that made it illegal to bring in this African elephant  
11 ivory?

12                  THE DEFENDANT: Yes.

13                  THE COURT: And did you have an agreement with at  
14 least one other person to do this?

15                  THE DEFENDANT: Yes.

16                  THE COURT: Was any ivory actually brought into  
17 this country as part of that agreement?

18                  THE DEFENDANT: Yes.

19                  THE COURT: Do you know if any of it came in at  
20 Kennedy Airport?

21                  THE DEFENDANT: Yes.

22                  THE COURT: When did this happen? When was this  
23 ivory being brought in?

24                  THE DEFENDANT: From 2007 to 2008.

25                  THE COURT: Alright, I think that satisfies all of

1 the essential elements. Mr. Sinclair, is there anything  
2 further that you would like me to either to illicit or that  
3 you would like to proffer?

4 MR. SINCLAIR: No, your Honor, I think there's a  
5 factual basis for the plea.

6 THE COURT: Alright, is there anything further  
7 that you would like me to cover for purposes of Rule 11?

8 MR. SINCLAIR: Nothing further, your Honor.

9 THE COURT: Mr. Gordon, is there anything further  
10 you think I should cover under Rule 11?

11 MR. GORDON: No, your Honor.

12 THE COURT: Alright. Based on what I've heard  
13 today, I find that Mr. Mfomboutmoun is competent to proceed.  
14 I find that he is acting voluntarily and that he fully  
15 understands his rights and the potential consequences of his  
16 plea and that there is a factual basis for his plea of  
17 guilty.

18 I therefore respectfully recommend that the Court  
19 accept the defendant's plea of guilty to Count 1 of the  
20 indictment.

21 Do you have a date to give for sentence?

22 THE CLERK: (Ui).

23 THE COURT: I don't see that there. Alright, I'll  
24 ask you folks to contact the Probation Department and the  
25 Court.

1                   MR. GORDON: And I would like to be present for  
2 the presentence interview. I think it's noted on the  
3 report.

4                   THE COURT: Alright. That's noted. Is there  
5 anything further, folks?

6                   MR. GORDON: No, your Honor.

7                   MR. SINCLAIR: Nothing further, your Honor.

8                   THE COURT: Thank you, all.

9                   ALL: Thank you.

10                  THE COURT: I'll return to Mr. Sinclair the plea  
11 agreement.

12                  MR. SINCLAIR: And the indictment, too, your  
13 Honor, please?

14                  THE COURT: I'm sorry?

15                  MR. SINCLAIR: I gave you my copy.

16                  THE COURT: Thank you.

17                  MR. SINCLAIR: Thank you.

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I certify that the foregoing is a correct transcript  
from the electronic sound recording of the proceedings in  
the above-entitled matter.



ELIZABETH BARRON

April 7, 2009